



Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapter 80
Regulation title	Methods and Standards for Establishing Payment Rates—Other Types of Care
Action title	Physician Emergency Room and OB/GYN Reimbursement
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The substantive changes proposed in this action are the modifications to the reimbursement formula, in order to increase reimbursement, for physicians for certain emergency room procedures and obstetric/gynecological fees. These two issues will be discussed in this order throughout this document.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages (Physician Emergency Room and OB/GYN Reimbursement) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements

of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Increase Reimbursement for Certain Emergency Room Procedures

Chapter 4, Item 326(JJJ) of *2004 Acts of the Assembly* directed DMAS to increase reimbursements to physicians delivering Medicaid services in hospital emergency rooms.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The Administrative Process Act (Section 2.2-4011(i)) provides for the Governor's approval of an agency's emergency regulations that meet the imminent threat to public health or safety standard. The Governor declared that a threat to public health exists regarding access to OB/GYN care for Medicaid and FAMIS recipients across the Commonwealth and directed DMAS to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent relative to rates currently in effect. This proposed amendment would add language providing that certain physician codes be increased by 34 percent above the normal calculated amounts. In response to the Governor's initiative and due to Virginia's growing problem with access to obstetrical and gynecological services for Medicaid and FAMIS recipients due, in part, to stagnant reimbursement, DMAS adopted emergency regulations to provide for a needed reimbursement increase.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

These proposed regulatory actions are important for the health, safety, and welfare of Medicaid recipients because improving Medicaid reimbursement for these services will enable more providers to continue to render them. This is expected to improve access to care for these services across the Commonwealth.

Increase Reimbursement for Certain Emergency Room Procedures

The purpose of this change is to conform to the legislative mandate to increase the reimbursement for certain emergency room procedures.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The purpose of this change is to increase reimbursement for certain obstetric/gynecological procedures in order to help address the growing problem with access to this care across the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates — Other Types of Care (Attachment 4.19-B), State Agency Fee Schedule for Resource Based Relative Value System (RBRVS) (Supplement 2) (12 VAC 30-80-190).

Increase Reimbursement for Certain Emergency Room Procedures

Provisions in 12 VAC 30-80-190 describe the methodology by which the Physician Fee schedule is established and updated. As directed by the Appropriations Act, the proposed amendment would add language providing that certain physician codes for emergency room evaluation and management fees be increased by 2 percent above the normal calculated amounts.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The Governor's Work Group on Rural Obstetrical Care examined issues related to a growing problem of access to obstetrical and gynecological care for women of the Commonwealth. This work group has focused on multiple issues causing access to care problems in obstetrical and

gynecological services (OB/GYN), such as increased cost of professional liability insurance, cultural/legal barriers to care, and reimbursement rates, among others.

Based on preliminary findings of the work group, it has been concluded that low reimbursement rates under the Medicaid and FAMIS programs are a significant factor related to the access issue in obstetrics and gynecology for Medicaid and FAMIS recipients. While the work group continues its review and evaluation of these issues, addressing low reimbursement rates for obstetrical and gynecological services will be an important part of the work group's comprehensive approach to solving this access problem.

On August 12, 2004, the Governor declared that a threat to public health exists regarding access to OB/GYN care for Medicaid and FAMIS recipients across the Commonwealth and directed the DMAS to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent relative to rates currently in effect. This proposed amendment would add language providing that certain physician codes be increased by 34 percent above the normal calculated amounts.

Medicaid covers the cost of delivery for a significant percentage of the children born in Virginia through both the fee-for-service program as well as through managed care. This rate increase will be applied to both fee-for-service and MCOs.

The text in paragraph E providing for the three-year phase in of the original RBRVS methodology is no longer required as this regulation is fully effective. Therefore, this text has been stricken out in this proposed action.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

These proposed changes benefit the citizens of the Commonwealth because the increases in provider reimbursement will preserve access to vital OB/GYN and emergency room services. The advantage to the agency and to the Commonwealth is that these reimbursement increases help to ensure an adequate network of providers, thereby preventing large geographic gaps of providers rendering covered services.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

There were no changes made to the text of the proposed regulation since the publication of the proposed stage.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the April 4, 2005 Virginia Register for their public comment period from April 4, 2005 through June 3, 2005. There were no comments received during the proposed regulatory comment period.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

These final regulations are identical to the current proposed regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-190		Establishes the formula, based on Resource Based Relative Value Scale, for reimbursement for physician services.	Modifies formula to permit increased payments for emergency room physicians for certain evaluation and management fees; modifies formula to permit increased reimbursement to physicians for obstetric/gynecological fees.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, nor modify disposable family income. These changes may contribute to strengthening the family unit by improving access to health care as these fee increases are expected to increase the availability of OB/GYN services all over the Commonwealth.